

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1160135  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Billy ROQUE

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1848

Billy ROQUE

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-19

By order dated 10 April 1970, an Examiner of the United States Coast Guard at Jacksonville, Florida, revoked Appellant's seaman's documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that Appellant was on 27 February 1970 convicted by Hillsborough County Criminal Court of Record in Hillsborough County, State of Florida, for violation of the Narcotic Drug laws of the State of Florida.

At the hearing, Appellant elected to act as his own counsel. Although Appellant declared that he did not recognize the hearing he entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence records of proceedings in a Florida court.

In defense, Appellant offered no evidence but declared that his conviction was not final because it was on appeal.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on 14 April 1970. Appeal was timely filed on 4 May 1970. Although Appellant had until 9 July 1970 to add to his original notice of appeal, he has not done so.

FINDINGS OF FACT

On 27 February 1970, Appellant was convicted in the Criminal Court of Record, on and for Hillsborough County, Florida, on a charge of possession of heroin, in violation of a narcotic drug law of the State of Florida.

## BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant's conviction was not final under Florida law, and that it is inconsistent to look to State law in this proceeding for some purpose and not for others.

APPEARANCE: Appellant, pro se.

## OPINION

### I

Appellant first argues that under the holding of Joyner v State (1947) 158 Fla. 806, 30 so. 2nd 304,) his conviction in the Florida court for unlawful possession of heroin is not "final" such as to bring him within the purview of 46 U.S.C. 239a-b. Some comment on this is necessary.

First, the Joyner case decision does not hold that every conviction in a Florida court which is appealed from is "not final" until the appeal has been decided. It holds only that such a conviction is not final such as to make it usable in a subsequent criminal proceeding in order to bring into action the provisions of the Florida "habitual criminal" law.

Since this proceeding under 46 U.S.C. 239a-b is not a criminal proceeding under Florida law, the Joyner holding is irrelevant.

Secondly, it may be noted that the wording of 46 U.S.C. 239b does not of itself preclude an order of revocation before a conviction becomes final. It says:

"The Secretary may...take action to revoke the seaman's document of...any person..., the revocation to be subject to the conviction's becoming final..."

This can easily be construed as authorizing both hearing and order of revocation before a conviction becomes final. I have not chosen to implement this law under this broad but reasonable construction, but have instead limited action to cases in which the conviction has become final. To do this, it has been necessary to define "finality" so that field personnel may know when it is appropriate to initiate proceedings.

It is elementary that a definition of a term in a Federal statute designed to affect all merchant seamen and applicants for seamen's documents cannot vary from State to State when the fact

circumstances are the same. 46 CFR 137.03-10(a) makes it clear that under 46 U.S.C. 239b, "A conviction becomes final when no issue of law or fact determinative of a seaman's guilt remains to be decide by the trial court." In Appellant's case, it is obvious that no issue of law or fact remained to be decided by a trial court because Appellant was already in the Florida appellate system and well out of the trial court which had rendered judgment.

Appellant, of course, has his remedy under paragraph (b) of 46 CFR 137.03-10 if he can at any time demonstrate that his conviction in Florida has been reversed.

In this discussion it has been deliberately overlooked that Appellant has not either by sworn testimony or reference to an attorney's action, before the Examiner or me, actually demonstrated that his conviction is on appeal. Since the justification for the actions taken at hearing and on appeal is clear, resort need not be had to a technical rejection of Appellant's argument.

## II

Appellant has seized upon another point which must be, but can easily be, disposed of.

The Examiner noted that the minutes of proceedings in the Florida court "indicated that the Respondent was tried for the possession of heroin, but they did not indicate the section of the Florida Statute alleged to have been violated." The Examiner then took official notice, under 46 CFR 137.20-102(a), item (2), of "Section 398-03 of the Florida Statutes prohibits the wrongful and unlawful possession of heroin, among other drugs." From this the Examiner concluded that Appellant had been convicted of violation of a narcotic drug law of the State of Florida, as contemplated by 46 U.S.C. 239a.

Appellant complains that the Examiner, and the regulations under which he operates, are inconsistent in that States law is acknowledged, even followed, in some areas but not in others such as in the meaning of "finality" of conviction discussed in 'I' above.

No exhaustive study is required here of the relationship of State law to these proceedings, but one or two comments are appropriate.

The Examiner was correct in stating that he could look to the State law in order to determine whether Appellant's conviction was one cognizable under 46 U.S.C. 239b. Once the fact of conviction in the Florida court was ascertained the judgment of that court became

binding upon the Examiner because 46 U.S.C. 239b (b)(1) accords to State court judgments the same status as that of Federal court judgments.

The Examiner was correct also in not looking to State law to determine the conclusiveness of the conviction for purpose of this proceeding. State law does not control, nor even affect, a Federal procedure such as this. Parallel considerations under R.S. 4450 (46 U.S.C. 239) are not appropriate here since the proceeding was not brought under that statute.

### III

An error in the pleadings must be mentioned here. It was asserted merely that Appellant had been convicted for violation "of the Narcotic Drug laws of the State of Florida." The Examiner properly cured this deficiency, which was found also in the proof, by taking official notice of the laws of Florida. It should not have been left to the Examiner to do this on his own motion; the defect should have been noted by the Investigating Officer. The specification should allege conviction of "violation of "a" narcotic drug law of Florida, and the law should be identified. If identification cannot be made at the time of service of charges it should be ascertained prior to opening of the hearing so that appropriate motion to amend or to make more certain can be made. The error here is not fatal, but it should not be necessary to say that a specification alleging conviction of "violation of narcotic drug law," without more, is not the kind of pleading that should be approved for future use.

### ORDER

The order of the Examiner dated at Jacksonville, Florida, on 10 April 1970 is AFFIRMED.

T. R. SARGENT  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 16th day of Aug, 1971.

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SUPPLEMENTAL ORDER

Revocation of Appellant's U.S. Merchant Mariner's Document was affirmed on 16 August 1971. The order was predicated on a finding that on or about 27 February 1970 Appellant was convicted in the Criminal Court of Hillsborough County, Florida, on a charge of possession of heroin in violation of a narcotic drug law of the State of Florida.

Pursuant to 46 CFR 137.03-10 and 137.20-190(b), Appellant has established that the conviction was unconstitutionally set aside for all purposes by order, dated 3 July 1972, of the United States District Court for the Middle District of Florida.

The order of revocation of Appellant's U. S. Merchant Mariner's Documents is hereby rescinded.

C. R. BENDER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 30th day of March 1973.

